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PLEASE RETURN REPORT AND RECOMMENDATIONS OF THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION

A REPORT TO THE FORTY-EIGHTH LEGISLATURE

December 1982

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REPORT AND RECOMMENDATIONS
OF THE
MONTANA DISTRICTING AND APPORTIONMENT COMMISSION

DECEMBER 1982

Published by

Montana Legislative Council
State Capitol

Helena, Montana 59601

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FORWARD

Late in the last century, from about the year 1960, Americans struggled for "equality of representation" by periodic or decennial redistricting and reapportionment of their legislative assemblies to what they called "one-man, one-vote" standards.

All of the key words used in that struggle had either four or five syllables. The only popular label developed by men-in-the-media to identify what was going on was itself a compound of four one-syllable words that were even less descriptive than the polysyllables used by the politicians, legalists and academics to communicate with each other.

A citizen in 1971 might have wondered whether these ponderous incantations were the mutterings of some priesthood conspiring to keep him bewildered. The simple truth, seen in the long evolution of language forms, was that the problem was new and that shortword symbols had not yet developed for matters not yet entirely understood.

--Thomas Aquarius, from Polls, Pols and Words
(Mars: Multican & Lipschitz, 2071 A.D.)

Thus might a 21st-century historian of the language look back at our efforts to communicate about a fundamental aspect of our political system.

--Ellis Waldron, Legislative Reapportionment,
Montana Constitutional Convention Memorandum
No 10. Montana Constitutional Convention
Commission, 1971-1972.

PREFACE

This report is written for the purpose of providing a factual account of the mechanics that were involved in redistricting Montana's legislative and congressional boundaries following the 1980 census. It also provides the reader with a historical perspective of redistricting in Montana and at the federal level. For a look into the rationale for districting decisions and a more subjective analysis of the process, the reader must turn to discussions from the Commission's minutes and tapes, as well as to newspaper articles, personal accounts, correspondence, and other material filed for the record with the Legislative Council.

Exceptions to the above purpose are in the section explaining reasons for district population deviations in excess of $\pm 5\%$ from the ideal district size and in the final section where the Commission presents its recommendations to those who will be concerned with reapportionment in future years.

At the time this report is being printed, the Commission's redistricting plan is not yet final, as the Legislature will review the plan for up to 30 days when it meets in January, 1983, and the Commission is allotted 30 days thereafter for finalizing its decisions. The official plan will be filed in the office of the Secretary of State and will contain the official district maps and census enumeration data defining the districts.

TABLE OF CONTENTS

	Page
FORWARD	i
PREFACE	ii
INTRODUCTION	1
HISTORICAL PERSPECTIVE	2
THE REDISTRICTING PROCESS	9
DEVIATIONS IN EXCESS OF \pm 5%	20
RECOMMENDATIONS	24
APPENDICES	
A. Map of Proposed Congressional District Boundary	A-1
B. Montana's Constitutional Provisions on Redistricting	B-1
C. Recommended Bill to Accelerate the Time Frame for Congressional Redistricting	C-1
D. Recommended Bill to Establish the Commissioners' Salaries at the Same Rate as the Salaries of the Legislators	D-1

INTRODUCTION

In accordance with the Montana Constitution, in 1979 the Majority and Minority Leaders of the House and Senate of the Montana Legislature each appointed an individual to the Montana Districting and Apportionment Commission. John Kuhr of Havre was the appointee of the Republican Senate Majority Leader. The Senate Minority Leader made the appointment of Nancy Aagenes, a Helena resident. In the House, the Democratic Majority Leader designated Jim Pasma, also of Havre, as Commissioner, while the Minority Leader appointed Marge Bell of Helena. As the four appointees were unable to reach a consensus on the fifth commissioner and chairman within the constitutionally-allotted time frame of twenty days, the Supreme Court was responsible for the appointment. The Court appointed Gene Mahoney of Thompson Falls. With the death of Marge Bell in early 1981, the House Minority Leader selected Louise Galt, Helena, as her replacement. JoAnn Woodgerd of Stevensville succeeded Nancy Aagenes in November, 1981, when the latter moved from Montana.

The five Commissioners were charged with the task of redrawing Montana's congressional and legislative district boundaries using 1980 census data in order that each district would contain roughly the same number of people. Authority for redistricting is found under Article V, Section 14 of the Montana Constitution and will be discussed at greater length later in this report.

The terms "redistricting" and "reapportionment" are used synonymously in the report, meaning the redrawing of district (here, congressional and legislative) boundaries. However, this definition is more precisely ascribed to the former term, while the latter technically refers to the redistribution of districts to particular governmental units.

¹ Toward a System of 'Fair and Effective Representation', Common Cause, Washington, 1977.

HISTORICAL PERSPECTIVE

Judicial Intervention in the 1960s -- Population Equality Standards

In 1962, in the case of Baker v. Carr,² the U.S. Supreme Court made its landmark decision to depart from the tradition of judicial nonintervention in the "political thicket"³ of redistricting. The decision marked the beginning of reapportionment upheavals throughout the nation. Repercussions were felt during the next decade in the form of constitutional conventions and amendments and a myriad of court cases. Between 1962 and 1972, court challenges to legislative redistricting plans were brought in 48 states.⁴ The 1970s and early 1980s have already witnessed extensive litigation.

Although the Supreme Court neglected in the Baker decision to define specific standards to be used for redistricting, such guidelines ensued shortly. The following year in Gray v. Sanders,⁵ Justice Douglas concluded in the majority opinion the now-famous assertion that, "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing -- one person, one vote."⁶

In 1964, the court cast judgment on a congressional district plan in the case of Wesberry v. Sanders, holding that "The command of Article I, Section 2,... means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."⁸ The same year the Court issued its unequivocal and far-reaching opinion in the case of

² 369 U.S. 186 (1962).

³ Colegrove v. Green, 328 U.S. 549 (1946).

⁴ Reapportionment: A Better Way, Common Cause, 1977, p. 4.

⁵ 372 U.S. 368 (1963).

⁶ Ibid., 381.

⁷ 376 U.S. 1 (1964).

⁸ Ibid., 7-8.

Reynolds v. Sims⁹ that "as a basic constitutional standard, the Equal Protection Clause requires that seats in both houses of a bicameral state legislature must be apportioned on a population basis."¹⁰ The Court allowed some deviation from strict equality if "based on legitimate considerations incident to the effectuation of a rational state policy."¹¹ The Court, however, did not at this time give any indication as to what would constitute an acceptable degree of population variance; rather, the Court asserted that "what is marginally permissible in one state may be unsatisfactory in another."¹²

Of interest is the distinction the Supreme Court has made between legislative and congressional districts as to the constitutional cornerstone for the population equality standard. The standard for legislative districts rests on the Equal Protection Clause of the Fourteenth Amendment, while population equality of congressional districts is based on interpretation of Article I, Section 2.

Also important, as an offshoot of the above, is the distinction the Court has made between legislative and congressional plans with regard to the degree of population variance it will tolerate. While in their congressional plans, states must attempt to achieve "precise mathematical equality," justifying "each variance, no matter how small,"¹³ the Court has allowed the states to use a broader latitude for legislative redistricting. In the case of White v. Regester, the majority of the Court asserted:

Insofar as the District Court's judgment rested on the conclusion that the population differential (i.e. overall range) of 9.9 percent ... made out a prima facie equal

⁹ 377 U.S. 533 (1964).

¹⁰ *Ibid.*, 568.

¹¹ *Ibid.*, 579.

¹² *Ibid.*, 578.

¹³ Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969).

¹⁴ 412 U.S. 755 (1973).

protection violation under the Fourteenth Amendment, absent special justification, the court was in error.¹⁵

However, the Court warned:

Very likely, larger differences between districts would not be tolerable without justification based on legitimate considerations incident to the effectuation of a rational state policy....¹⁶

Of the population variance cases it has decided, the Supreme Court has upheld only one legislative district plan with an overall range above 10%. That was in the case of Mahan v. Howell,¹⁷ in which the plan's 16.4% deviation was "said to advance the rational state policy of respecting the boundaries of political subdivisions."¹⁸ However, the Court noted that "this percentage may well approach tolerable limits."¹⁹

Other Legal Requirements

Although judgment as to whether population equality standards have been met must still be determined on a case-by-case basis, the parameters on which to base this judgment have been limited. In contrast, the courts have only begun to answer the many questions regarding quality of representation; these range from charges of partisan and racial gerrymandering to the use of multi-member districts.

The Fourteenth and Fifteenth Amendments to the United States Constitution forbid racial discrimination in drawing district lines. Minorities must be afforded an access to the political system equal to that of all other persons and groups.

¹⁵ *Ibid.*, 763.

¹⁶ *Ibid.*, 764.

¹⁷ Reapportionment: Law and Technology, National Conference of State Legislatures, June, 1980, p. 16.

¹⁸ 410 U.S. 315 (1973).

¹⁹ *Ibid.*, 328.

²⁰ *Ibid.*, 329.

Certain provisions of the Voting Rights Act of 1965 apply to Montana's redistricting process. Basically, that Act is a restatement of the Fourteenth and Fifteenth Amendment voting rights guarantees; it also grants remedies for violations of the Act.

The Equal Protection Clause of the U.S. Constitution pertains to all citizens, requiring not only population equality of the districts but also consistency in the way districts are created. The Commission discussed equal protection principles when setting district boundaries around the Malmstrom Air Force Base. The Commission rejected the argument that the base should be divided because of low voter turnout, and instead chose to uniformly apply the criterion of keeping communities of interest intact.

Montana's Court-Drawn Plan and the Move for Constitutional Revision: 1965-1971

When the Montana Legislature convened in 1965, there was no question -- in the wake of Reynolds v. Sims -- that the citizens of the state were being denied their constitutional rights to equal protection.

Not only were Montana's senators elected under a "little federal"²¹ system, but senators representing 16% of the state's population and representatives of 37% of the population could exercise majority control in their respective houses. The inequities were most vivid in eastern Montana where a senator from Yellowstone County represented eighty-eight times the ²³ number of people as the senator from Petroleum County.

²¹ Montana's one senator per county was analogous to the U.S. Senate's distribution of seats based on statehood rather than population.

²² Ellis Waldron and Paul B. Wilson, Atlas of Montana Elections: 1889-1976, University of Montana Publications in History, Missoula, Montana, 1978, p. 234.

²³ Ellis Waldron, "Montana," in Leroy Hardy et al. (eds.), Reapportionment Politics: The History of Redistricting in the 50 States, Sage Publications, Beverly Hills, 1981, p. 188.

Immediately after the 1965 Legislature convened, a three-judge federal district court took notice of "invidious discrimination" based on malrepresentation and gave the legislature the remainder of the session to reapportion itself. Unable to accomplish this task, Montana was the first state²⁴ to be reapportioned by means of a court-drawn plan.

The 1967 Legislature, elected under the court's districts, approved the plan; it remained in effect until 1971. It created multi-member districts comprised of one or more than one whole county -- a departure from Montana's primarily single-member districts of the past.

A single reapportionment was not sufficient remedy for the inequities built into Montana's 1889 Constitution. Nor was a constitutional amendment sufficient -- ratified by the voters in 1966 -- which provided for the reapportionment of both houses²⁵ of the Montana legislature on a population basis.²⁶ The court-mandated upheavels of an entrenched political structure opened the doors to full scale constitutional scrutiny.

In 1967, the Legislative Council was assigned to conduct an interim study of the Constitution to determine its adequacy.²⁷ The study group concluded in its report to the 1969 Legislature that "there is need for substantial revision and improvement in the Montana Constitution."²⁸ The 1969 Legislature submitted a referendum to the 1970 voters²⁹ calling for a constitutional convention and also created a Constitutional Revision Commission to study the 1889 document, draft changes to it,³⁰ and recommend methods for implementing the changes.

²⁴ Ibid.

²⁵ Ch. 273, Laws 1965.

²⁶ House Resolution 17, Senate Resolution 22, 1967 Legislative Assemblv.

²⁷ The Montana Constitution: A Report to the Forty-First Legislative Assembly, Report No. 25, Montana Legislative Council, October, 1968, p. 92.

²⁸ Ch. 65, Laws 1969.

²⁹ Ch. 53, Laws 1969.

The 1971 Legislature, meeting in its regular session, was unable to reapportion the districts for the election of the constitutional convention delegates. A reapportionment plan completed by the Legislature in a first special session was successfully challenged in federal court.³⁰ In a second special session, the Legislature³¹ redistricted itself and the Court upheld the plan. The constitutional convention delegates were elected under it in November. The plan created 23 districts, from which 100 delegates were elected; it broke only five county lines.

The 1972 Constitution³²

Montana's new Constitution was ratified by the voters in 1972. Reapportionment requirements under it contained many features new to Montana. Most significant was the creation of a nonlegislative commission to accomplish this task.

Nonlegislative authority for reapportionment is a procedure that has been used elsewhere around the country. Montana's Constitutional Convention Commission wrote that by the end of the 1960s "more than one-third of the states had developed some specialized nonlegislative reapportionment agency either to initiate the matter³³ or to backstop legislatures that failed the task."³⁴ Currently, Montana's reapportionment procedure is one of three³⁴ relied upon by Common Cause in its model proposal, largely because of the structure of the Montana Commission. A factor leading to the creation of a nonlegislative reapportionment authority was the proved inability of the Montana Legislature to redistrict itself.

³⁰ Wold v. Anderson, 327 Fed. Supp. 1342.

³¹ Wold v. Anderson, 335 Fed. Supp. 952.

³² The state's constitutional provisions pertaining to reapportionment are contained in Appendix B.

³³ Ellis Waldron, Legislative Reapportionment, Montana Constitutional Convention Memorandum No. 10, Montana Constitutional Convention Commission, 1971-72, p. 35.

³⁴ Common Cause Report on Congressional and State Redistricting, June 1982 - Number Two, Common Cause, p. 35.

Other significant features of Montana's constitutional requirements for reapportionment are: the establishment of single-member districts; the mandates of population equality, compactness, and contiguity; and the absence of legislative power over the plans, excepting the power of review.

The 1974 Plan

The first reapportionment to be conducted under the 1972 Constitution began with the appointment of the Commissioners in 1973 and ended when the plan was filed with the Secretary of State in early 1974. The overall range of deviation of house districts was 15.48%; the overall range of senate districts was 13.08%.

Return to Biennial Sessions

In November, 1974, Montana voters approved a constitutional amendment to return to biennial (rather than annual) legislative sessions - the system under which Montana had operated since statehood. This amendment had unanticipated ramifications on the time frame for reapportionment. Under the Constitution, completion of the reapportionment plan cannot occur until after legislative review of the plan.

An initial legal issue facing the 1979-83 Commission involved interpretation of the constitutional time frame, which requires that "the Commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available."

In State v. Montana Districting and Apportionment Commission,³⁵ the state district court ruled that the Commission must submit its plan to the first regular session of the legislature following the Commission's appointment or to the first regular session of the legislature following the availability of census figures, whichever session came later. In this instance, the Commission was required to submit its plan to the 1983 Legislature, meeting in regular session.

³⁵ District Court of the First Judicial District of Montana, Docket No. 46873, August 12, 1981.

THE REDISTRICTING PROCESS

Size of Legislature

Montana's Constitution states that "the size of the legislature shall be provided by law," and limits the size to between 80 and 100 house members and half that number of senators.³⁶ The Constitution requires the Districting and Apportionment Commission to divide the state "into³⁷ as many districts as there are members of the house," thereby establishing single-member districts. The statutes do not define the size of the legislature; 5-2-101, MCA, merely reiterates the constitutional framework requiring that the number of districts be "specified by law."

Because authority for establishing the size of the legislature was unclear, the 1973-74 Districting and Apportionment Commission requested an opinion from the Attorney General as to who holds this authority. On April 11, 1973, the Attorney General issued his opinion³⁸ that the Commission, whose plan "shall become law"³⁹ is responsible for determining the size of the legislature.

At its July 14, 1981 meeting, the successor Commission decided to reapportion the state into the customary 100 house and 50 senate districts.

Criteria

Defining criteria was a task of enormous significance to the Commission, first, because the criteria were limiting factors for staff district proposals and, second, because the Commission was responsible for adhering to the criteria when making its decisions. The establishment of criteria helped the Commission apply a consistent approach to redistricting in an attempt to guarantee to the citizens of Montana a fair method and equal protection of their voting rights.

The state Constitution stipulates the criteria of population equality, compactness, and contiguity of the

³⁶ Article V, Section 2, Montana Constitution.

³⁷ Article V, Section 14, Montana Constitution.

³⁸ 35 Ag. Op. No. 12, April 11, 1973.

³⁹ Article V, Section 14, Montana Constitution.

districts. Regarding population equality, in conformity with U.S. Supreme Court guidelines, the Commission adopted a criterion "to attempt to achieve the minimum amount of deviation in congressional districts."⁴⁰ For legislative districts, the Commission adopted a guideline for the "as nearly equal in population as is practicable" requirement of an overall relative range of 10%, or $\pm 5\%$ deviation from the ideal (average) population.

Under 1980 census figures, these population guidelines meant the following:

Montana's population - 786,690

Ideal congressional district - 393,345

	<u>House</u>	<u>Senate</u>
ideal	7,866.9	15,733.8
+5% deviation	8,260.245	16,520.49
-5% deviation	7,473.555	14,947.11

The requirement that all areas within a district be made of contiguous parts is fairly self-explanatory. Staff did make a point, however, not to combine areas into one district that were connected by only a road, pipeline, point, or other such questionably contiguous accesses. Such corridors are used to annex areas into the city limits of various Montana cities. For example, in one of Helena's legislative districts, the Commission established a boundary that follows the city limits with the exception of two unpopulated areas of land connected by a point and an imaginary line.

The meaning of the requirement that districts consist of "compact territory" was never defined by the Commission, although the subject of compactness did arise with regard to particular districts under consideration. The Commission's staff attorney addressed the subject in a memo to the Commission dated November 10, 1982 and at the November 20, 1982 public hearing.

⁴⁰ Minutes, Montana Districting and Apportionment Commission, July 14, 1981.

The Commission adopted the following criteria for forming legislative districts in addition to the constitutional mandates listed above.

1. Consideration shall be given to existing governmental lines. These include such things as county, city, Indian reservation, precinct, and school district lines.
2. Geographic boundaries will be respected. Montana's extreme geographic conditions make it necessary, from a practical standpoint, to respect these features. For example, the Continental Divide and other mountain ranges make travel extremely difficult, if not often impossible, between technically contiguous areas. Another natural divider is the Missouri River, particularly where it runs for 120 miles without bridge crossings.
3. Wherever practical, consideration shall be given to existing legislative district boundaries. This criterion is supported not only from the view of protecting the careers of incumbent legislators, but also from a broader policy perspective which recognizes that continuity and the accumulation of expertise in our legislative leaders are desirable. Furthermore, consistency in polling places both reduces administrative costs and responsibilities and encourages voter participation in elections.

The U.S. Supreme Court has ruled on several occasions that redistricting designed to protect incumbents does not in and of itself render a plan invalid or constitute invidious discrimination.⁴¹ However, this criterion will neither justify a plan that can be successfully challenged on legal grounds nor may it serve to perpetuate unconstitutional dilution of minority voting rights.

4. Senate district boundaries, wherever possible, will follow the congressional district division. The Commission abandoned this criterion early in the process, as it proved to be impractical and did not seem to serve in the effectuation of a rational state policy.

⁴¹ White v. Weiser, 412 U.S. 783, 791 (1973); Burns v. Richardson, 384 U.S. 73, 89 n.16 (1966).

5. Communities of interest will be considered. With this criterion the Commission sought to create homogeneous groupings. Communities of interest can be defined by trade areas, organizations, and communication and transportation networks. Communities of interest capsulize all the other criteria excepting population equality, because these communities generally help define or are defined by governmental boundaries, geographic boundaries, and compact and contiguous territory.

The Commission never formally attached a relative weight to the individual criterion, although constitutional and legal requirements obviously took precedence. Rarely did a district satisfy all criteria, and districting decisions often required the application of a balancing test among the competing interests. Often it was necessary to apply this balancing test not only to choices for individual districts but to regional and statewide repercussions of district choices.

Criteria were regarded by the public with varying degrees of importance. For example, some individuals in Ravalli County proposed a plan to divide the county seat of Hamilton, rather than break the Ravalli/Missoula County line to the north. In contrast, residents of Cut Bank voiced strong opposition to their city's division. While Pondera County residents were well organized in their efforts to keep the county undivided, citizens of northeastern Montana told the Commission that county boundaries were not reflective of the true communities of interest in their area. In all these examples, arguments were made in support of the opposing positions.

Congressional Districts

On October 16, 1981, staff presented to the Commission three proposals for redistricting Montana's congressional district boundary. The Commission tentatively adopted Plan C, which, throughout the Commission's work, received no objections. The plan moves the counties of Liberty, Toole, Pondera, and Meagher from the western to the eastern congressional district. No other changes are made in the previous congressional districts.

The following chart indicates the relevant statistical data for Plan C.

absolute deviation	± 47 people
relative deviation	±.01%
overall range expressed in absolute and relative terms	94 people or .02%

A map of Plan C is attached as Appendix A.

Census Data

The Montana Constitution contemplates the use of federal census data as the population base by which districts will be drawn. Official 1980 census data for Montana were ready for use in early 1981.

The smallest census unit is the "block," which is a unit, usually bound by four streets, found in all urbanized areas (Billings, Great Falls, and Missoula), in territory extending beyond the urbanized areas, in incorporated places with 10,000 or more inhabitants outside urbanized areas, and in other areas which contracted with the Census Bureau for the collection of block data.⁴² The Census Bureau treated Silver Bow and Deer Lodge Counties, which operate under city-county consolidated forms of local government, as municipalities and blocked these counties in their entirety. The availability of block by block census data provided the Commission with a much needed greater degree of flexibility than was available during the last round of reapportionment.

The enumeration district (ED) is the smallest census unit available in the rural areas of the state where block data is not provided. While EDs generally follow natural or identifiable boundaries, exceptions do exist. The enumeration districts at times imposed significant obstacles in the creation of legislative districts. For example, one ED in the Helena area contained over 3,000 people, or close to 40% of the ideal district population. The most heavily populated

⁴² Census of Population and Housing, 1980: PL. 94-171 Population Counts Technical Documentation, U.S. Bureau of the Census, Washington, D.C., 1981, pp. 30 and 32.

EDs were located in Gallatin, Flathead, Lincoln, and Lewis and Clark Counties, there limiting the ways in which pieces of the "puzzle" could be put together. The 1974 report of the Montana Districting and Apportionment Commission provides further insight into the problems of EDs with large populations:

While a legislator in Montana represents roughly 7,000 people, a legislator in a more populous urban state represents several times as many people. The Census Bureau EDs, however, do not take this factor into account. Thus, in Montana the basic legislative building block's population averages about eight percent of the ideal, whereas in other states that figure is usually between one and four percent. In Virginia where a 16.4 percent variation from the ideal between the most and the least populous districts was allowed, the average ED contains about two and one-half percent of the ideal legislative district population. The point is, the larger a building block is the more unwieldly it is. The job is technically much easier in Virginia than Montana.

The average building block in Montana already deviates from the ideal Montana legislative district by almost the maximum deviation so far allowed by the U.S. Supreme Court. In the Bozeman area the average building block deviates from the ideal by 18 percent. This, in addition to the requirement that in Montana multi-member districts (which provide many more options in districting than single-member districts) are not allowed as they are in Virginia and in other states,⁴³ makes the problems more difficult.

Another problem presented by certain EDs was that their boundaries followed creeks or roads located in canyon bottoms. For example, ED 1333 in Missoula County had for its northern boundary the road through Pattee Creek Canyon and for its southern boundary Miller Creek. These two creek bottoms are separated by a mountain ridge. Therefore, if ED boundaries had been followed,

⁴³ 1973-74 Montana Districting and Apportionment Commission, Report of the Montana Districting and Apportionment Commission, Montana Legislative Council, 1973, p. 72.

people located in separate canyons by necessity would have been placed in the same legislative district, while people located in the same canyon but on different sides of the creek (or road) may have had to have been placed in different districts. The resulting districts would not have been sensible because of the geographic isolation and sparse population of some of these areas. Ridge lines would have been much more useful as ED boundaries.

Another problem presented by certain EDs was the "donut" district. This term was coined to describe an ED that completely encircles another census area. The area encircled is the donut hole. For example, ED 276A in Glacier County encircles the town of Cut Bank. (The cities of East Helena and Deer Lodge are other examples of areas surrounded by donut EDs.) Since districts in Montana must be composed of contiguous territory, Cut Bank and ED 276A would have had to have been treated as a single unit, unless (as was the case) the donut was divided. The population of the combined units was 4,291, an obvious limitation in the districts that could be created in the area.

Noteworthy to the formation of districts here was the existence of other inherent limitations and concerns. The Continental Divide forms the western boundary of Glacier County and, particularly in this area of Montana, acts as a physical and psychological barrier. Less than thirty miles north of Cut Bank, Glacier County shares its boundary with Canada. Compounding the already boxed-in layout of the region, the Blackfeet Reservation is located in Glacier County, and the Commission strove not to dilute the voting strength of this cultural, political, and racial community.

Both to provide itself with more flexibility in areas such as Cut Bank and to create more sensible districts for people in places such as the canyons outside Missoula, the Commission chose to divide certain EDs. The Commission used various methods in arriving at population counts of EDs that it split. It requested official census breakdowns from the Bureau of the Census for some of the more populous EDs. This, however, was a costly approach. In areas that were less densely populated, staff used various methods for reaching estimated population counts.

One method was to determine the number of dwellings in the split area and multiply these by the average

⁴⁴ Department of Highway maps indicate the dwellings and farm units located in all EDs.

number of people per dwelling located in the divided ED or city block.⁴⁵ In other instances, population estimates were arrived at with the use of thorough dwelling counts compiled by county assessors or from information reported by people familiar with the area (such as land use planners). In Flathead County, a long-term resident of Polebridge provided the Commission with the information that no people live west of the Whitefish ridge line, north of Canyon Creek, in EDs 1137 and 1138.⁴⁶

On file at the Legislative Council is a list of the EDs that were split, the legislative districts in which the split pieces are located, the source of the population counts for the split areas, and the reasons for splitting the EDs. Also on file is a technical description of each split. This description will be submitted to the Secretary of State with the final reapportionment plan.

Developing District Proposals

Early in the process the Districting and Apportionment Commission decided to tentatively establish its 100 house districts before pairing them into senate districts. (The Commission could have created the senate districts first, splitting them into house districts, or could have established the senate and house districts simultaneously.) Although no reasons for this decision were formally articulated, certain benefits are noteworthy.

Firstly, it is possible that an area intended to be a senate district would not contain the census building blocks which would allow it to be divided into two

⁴⁵ The U.S. Bureau of the Census, Summary Tape File 1-A and 1-B, provides statistics on the mean persons per household for EDs and blocks. This information is available from the Consulting Services Bureau of the Department of Administration.

⁴⁶ While staff estimates of populations in ED splits are not as precise as official census counts, the Commission did have some basis for trusting their accuracy. In ED 276A in Glacier County, staff estimated the population of the split area, and the Commission later requested an official census population breakdown. Staff's estimate was off by three people.

house districts that satisfied the constitutional criteria of population equality, compactness, and contiguity. Secondly, while pairing two house districts into a senate district can have the effect of neutralizing the senate district's population deviation, the reverse is true when a senate district is divided into two house districts -- the deviation is magnified. Thirdly, it could be argued that the constitutional framers intended that the house districts be created first, for the language in Article V, Section 14, of the Montana Constitution states: "Each senate district shall be composed of two adjoining house districts...." Lastly, it is apparent in retrospect that, rather than establishing senate districts piecemeal as house districts are set, the entire picture for house districts should be known before the pairings are made. Here more than anywhere, with so few options for house pairings into senate districts, one decision can send undesirable ripples across the entire state.

When developing district proposals, it was necessary for the staff to work from the rural areas into the urban centers where more flexibility existed. Census data were available on a block by block basis in the urban centers. The vast majority of the census blocks had populations of under 100 and, although no official count was done, a reasonable guess would be that the population of the average urban block was between 30 and 60. In contrast, the EDs in surrounding countryside usually had populations in the hundreds and, not infrequently, had populations in excess of one thousand.

Furthermore, EDs are generally large in geographic area, therefore posing communication problems that do not exist in blocked urban areas. Such impediments are of course relevant to districting options and decisions.

Lastly, the state's rural borders are the only places where absolute inflexibility in district boundaries exists.

As stated by the former redistricting commission: "Since there is a tendency to paint oneself into a corner because of the ripple effect, it is most practical to paint oneself into the corner with the most options."⁴⁷

⁴⁷ Report of the Montana Districting and Apportionment Commission, p. 73.

Staff developed redistricting proposals following consultations with many people. In urban areas, where the individual character of neighborhoods was difficult to discern from maps, staff traveled to the cities and met with interested persons before preparing boundary proposals. These individuals ranged from incumbent legislators to clerks and recorders, Democratic and Republican central committee members, county commissioners, land use planners, legislative candidates, and others. Staff spent approximately a week's time in each of the larger cities meeting with people and constantly revising boundaries in order to best satisfy the criteria and incorporate the suggestions of those interested. During developmental stages in rural areas, staff usually handled communication with local people from Helena.

Throughout the process, regular communication was made between staff, the Commission, and the Democratic and Republican state headquarters in Helena. All districting proposals were sent to the party headquarters as well as to the Commissioners. With access to a statewide newspaper clipping service, staff transmitted all articles related to reapportionment to the five Commissioners.

Hearings

In addition to holding numerous hearings in Helena, the Commission traveled to Conrad, Butte, Bozeman, Kalispell, Missoula, Great Falls, Billings, Glendive, Wolf Point, and Havre for public hearings. The Commission held the latter four during a one week tour of eastern Montana in midsummer, 1982. All hearings were well attended. The Commission sent notification of the hearings to incumbent legislators, the county central committees, clerks and recorders, Indian tribal councils, county commissioners, the local press, and any others wishing to be notified. Notification included maps of the proposals to be presented at the hearing. The Commission published comprehensive minutes following each hearing.

At times the Commission held hearings prior to making any tentative decisions in particular areas; at other times the Commission tentatively adopted a plan and presented it and others at the public hearings. The number of alternative district proposals developed by the staff hinged on what was requested by the Commission or interested persons. Rarely did staff use

discretion in limiting proposals. This occurred if a proposal was grossly in violation of the established criteria or if a ripple effect from the proposal created an unresolvable problem elsewhere. The responsibility for limiting options was in the hands of the Commission.

The Commission usually took action on districts soon after holding the public hearing for an area. Throughout the process, the Commission emphasized the tentative nature of its decisions. Any district boundary was open to change at any time prior to filing the plan with the Secretary of State. It was recognized, however, that as the Commission adopted more districts, options elsewhere became more limited. The Commission recommended that anyone presenting an alternative proposal contain the ripple effects to a few districts or to a given region.

DEVIATIONS IN EXCESS OF $\pm 5\%$

Below is a chart of the districts to be submitted to the legislature that have population deviations in excess of $\pm 5\%$. Following the chart is the Commission's summarized explanation as to why the deviations occur. A complete explanation of the rationale behind one decision involves comprehensive analysis of the entire plan.

<u>District</u>	<u>Population</u>	<u>Deviation</u>
House District (2)	8,322	+5.78%
House District (26)	7,467	-5.08%
House District (77)	8,279	+5.24%
House District (78)	8,263	+5.03%
House District (96)	7,473	-5.01%
House District (98)	7,461	-5.16%
Senate District (13)	14,945	-5.01%
Senate District (39)	16,542	+5.14%
Senate District (49)	14,941	-5.04%

House District 2

General support for the 200 series (as it was generally known) in northwestern Montana was expressed at the Commission's hearing in Kalispell on July 15, 1982. This series contained 13 house districts. It included the placement of the Bull Lake area south of Troy in the Sanders County district and otherwise left Lincoln County's boundaries intact. The remainder of Lincoln County's population was 16,512 or nine people below the desired $+5\%$ deviation for senate districts. With such little flexibility, options were limited. Staff presented a proposal in which each of the two house districts deviated by less than $+5\%$. However, the Commissioners adopted the alternative discussed here because the plan received general support from the residents of Lincoln County. This preference was based on Eureka's compatibility with the rural areas of the county in contrast to its incompatibility with Libby

(with which it was joined under the rejected alternative). The Commission expressed a preference for creating one semi-urban district and one rural district in the county.

House District 26; Senate District 13

On January 8, 1982, the Commission heard testimony from incumbent legislators from southeastern Montana in support of maintaining the combination of Custer and Prairie Counties as a senate district; the majority of Miles City would form one of the house districts and the remainder of Custer County and all of Prairie County would form the other. Testimony indicated that, in addition to the advantages of district continuity, the counties are sensibly joined because they share trade areas, county agents, and other officials. Staff informed the Commission that the combined counties had three people under the number needed to be within -5% deviation for senate districts. By necessity, the deviation of at least one house district had to fall outside the -5% goal.

The Commission did not articulate its reasons for adopting the districts. It is assumed that the Commission based its decision on the supporting testimony.

House Districts 77 and 78; Senate District 39

The Commission and interested persons primarily restricted their testimony on Gallatin County districts to the overall plans for the county: the Johnson-Marchwick Plan (later modified into Plan F), Plan A, and Plan C. With the exception of the discussion as to whether Gallatin County -- a rapidly growing area -- should have six small districts or five large ones, there was little discussion of the internal districts in the plans.

At the July 16, 1982 and October 5, 1982 hearings, the Commissioners who supported the adopted Plan A expressed the following reasons for their support:

1. the plan had fewer undesirable "ripples" than other plans;
2. Gallatin County was entitled to a majority in five not six house districts;

3. consideration of population projections was not a Commission priority; and
4. respect for other county boundaries was important.

No word was spoken on the internal divisions of Plan A.

In separate letters to the Commission and Gallatin County residents on September 28, 1982 and in testimony at the October 5, 1982 hearing, staff explained why the districts under Plan A had high deviations. Staff's presentations are summarized below.

Gallatin County's population is 42,865. The area in the Gallatin Canyon that is joined with Madison County contains 2,139 people; the remaining five districts in Gallatin County average 8,145. No more people from Gallatin County can be added to house district 75 because the EDs contiguous to the district are too large in population. Neither can the EDs be reshuffled to place more population from Gallatin County into house district 75 in order to lower the mean population of the remaining five Gallatin districts.

Since one of the five all-Gallatin districts has a population of 7,718 (house district 80, consisting of Three Forks, Manhattan, and Belgrade), the population of the other four districts averages 8,252 or +4.89%. District 80 cannot expand its current form, again because the EDs contiguous to it are too high in population. With such little population flexibility for creating the remaining four districts, it was likely that deviations of some would exceed +5%.

In summary, the reasons for the deviations in House Districts 77 and 78 are based both on the overall decisions made for the area and the limitations imposed by the census data.

Since House Districts 77 and 78 each exceed +5% in deviation, the pairing of these districts into a senate district (Senate District 39) must result in the senate district's deviation being in excess of +5%. The reason expressed for this pairing was that it united the two most urban Gallatin County districts.

House Districts 96 and 98

House Districts 95-98 in Yellowstone County are contained in definable areas⁴⁹ and are separated from the county's other districts by geographic features -- the Yellowstone River and the Rimrocks. These four districts also are distinguishable from the majority of the Yellowstone County districts in that they primarily are comprised of non-city residents. (Of the 29,895 people in the four districts, only 5,961 are located in the city limits.)

The above factors led the Commission to develop district proposals using the Rimrocks and the Yellowstone River as boundaries, despite the fact that the population of the four districts therefore averaged 7,473.75 (or -5% deviation). The low deviation in this contained area also may have been acceptable to the Commission because the average all-Yellowstone County house district population was 7,574 or -3.72%. The reasons for this low mean county deviation were based on regional considerations, including respect for county boundary integrity.

With no flexibility in population range, the result was that two of the four districts deviate in excess of -5%.

⁴⁹ These districts include the rural eastern portion of Yellowstone County and Billings Heights.

RECOMMENDATIONS

Accelerated Time Frame for Congressional Redistricting

As explained earlier in this report, the passage of the referendum for biennial sessions in 1974 had the inadvertent effect under the 1972 Constitution of delaying Montana's reapportionment schedule by one year. The Districting and Apportionment Commission recommends that the schedule for finalizing the congressional redistricting plan be accelerated. At present, Maine and Montana are the only two states in which the reapportionment authority will not complete its congressional redistricting plans until 1983. The Commission does not recommend altering the time frame currently allotted for establishing legislative districts.

Appendix C contains the proposed constitutional amendment and referendum prepared by the Commission to effectuate an accelerated process for congressional redistricting. This piece of legislation distinguishes the congressional from the legislative redistricting plan. (Currently, as interpreted by the District Court of the First Judicial District of Montana, they are viewed as a single plan and must be filed jointly with the Secretary of State.) The Commission recommends in the new schedule that the congressional redistricting plan be filed within 90 days after the official final census figures are available.

From its experiences in 1981-82, the Commission realizes that congressional redistricting in Montana will be a simpler undertaking than legislative redistricting, thus requiring less time in which to accomplish the task. Not only are there fewer district boundaries to be adjusted, but the strict population guideline mandated by the Supreme Court drastically reduces the influence of other criteria in redistricting decisions.

Since census data are anticipated to be available in the spring of the year following the census, the 90-day time frame eliminates the opportunity for formal legislative review of the congressional plan. However, this Commission observed only peripheral legislative concern with congressional redistricting, with the overwhelming interest of the legislators being in the reapportionment of legislative districts. To ensure that a congressional plan not be adopted in a vacuum, the Commission recommends that future commissions hold a hearing on it prior to filing it with the Secretary of State.

Salary Increases

Appendix D contains the bill to be introduced in the 1983 Legislature establishing the commissioners' salaries at the same rate as the salaries of the legislators.

Public Involvement

The Commission strongly urges future commissions to foster public participation in reapportionment and to educate Montana citizens about this important subject. The Commission recommends that successor commissions maintain the regular contact it had with the county clerks and recorders, county commissioners, city officers, county planning offices, state and county party central committees, and the press.

Staff Involvement

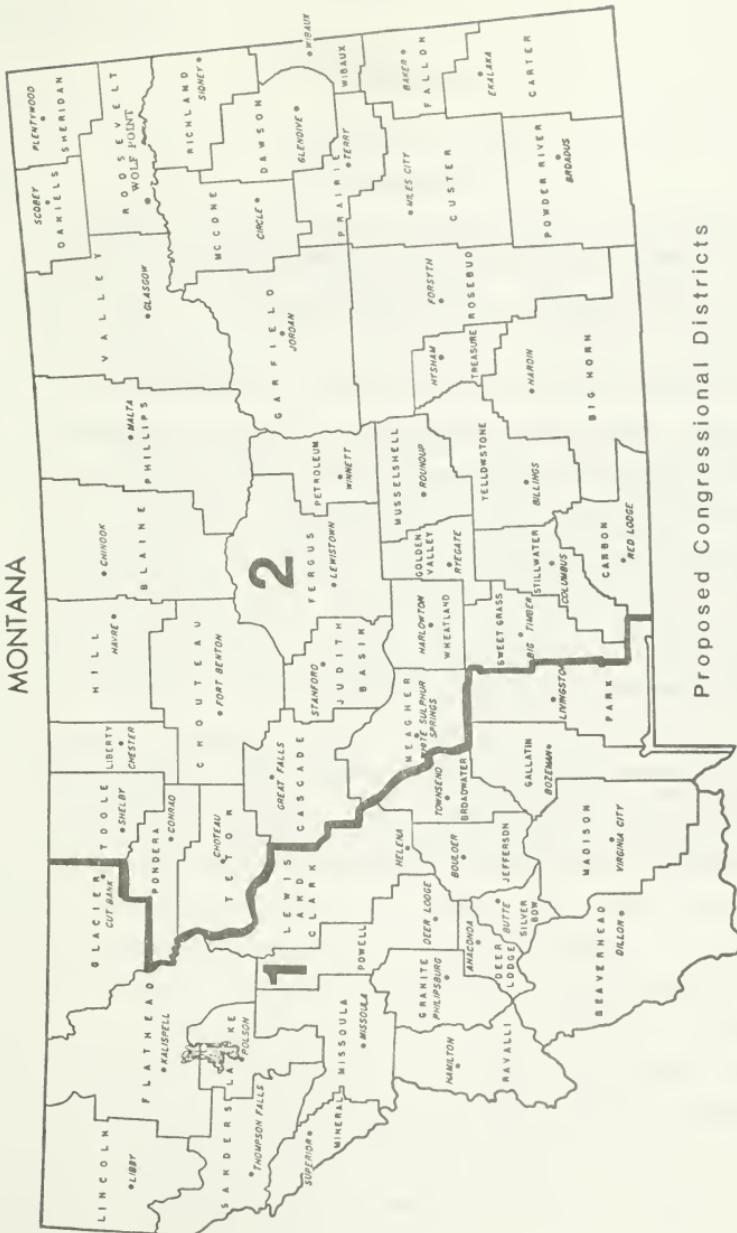
Section 5-1-106, MCA, requires the Legislative Council to provide the technical staff and clerical services needed by the Commission. The advantages of Council staffing are in the staff's understanding of and experience in maintaining a neutral political posture while working with highly political material.

However in some ways the task is more difficult for Legislative Council staff than it would be for others. Dissatisfied legislators, for whom staff will continue to work when reapportionment is completed, erroneously will place responsibility for their dissatisfaction on the staff. Staff may discover occasions in which the role as staff for an autonomous commission conflicts with the role assumed when staff is working directly for the legislators. Harmony between the two functions usually exists, but, in cases of conflict, staff's first obligation must be toward the Commission.

An alternative is for the Legislative Council to contract for commission staffing. In 1981, the Legislative Council considered and denied such a budget request.

Regardless of who provides staff services for the Commission, the position inherently is extremely sensitive. Public response to reapportionment can be highly emotional. Even if not held responsible for the Commission's decisions, staff is a convenient sounding board at which dissatisfaction can be aired. The sensitivity of the work requires a relationship of absolute trust between staff and Commission.

MONTANA



Proposed Congressional Districts

APPENDIX B

MONTANA CONSTITUTION

ARTICLE V

Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE
7 QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V,
8 SECTION 14, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE
9 CONGRESSIONAL DISTRICTS IN MONTANA BE REDISTRICTED WITHIN 90
10 DAYS AFTER THE OFFICIAL FINAL DECENTNIAL CENSUS FIGURES ARE
11 AVAILABLE; TO SUBMIT TO SUCH ELECTORS AMENDMENTS TO SECTIONS
12 5-1-101, 5-1-106, AND 5-1-108 THROUGH 5-1-111, MCA, TO
13 PROVIDE STATUTORY CONFORMITY TO THE CONSTITUTIONAL AMENDMENT
14 AND TO REQUIRE THAT A PUBLIC HEARING ON THE CONGRESSIONAL
15 PLAN BE HELD; PROVIDING AN EFFECTIVE DATE."

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Article V, section 14, of the Constitution

19 of the State of Montana is amended to read:

20 "Section 14. Districting and apportionment. (1) The

21 state shall be divided into as many districts as there are

22 members of the house, and each district shall elect one

23 representative. Each senate district shall be composed of

24 two adjoining house districts, and shall elect one senator.

25 Each district shall consist of compact and contiguous

1 territory. All districts shall be as nearly equal in
2 population as is practicable.

3 (2) In the legislative session following ratification
4 of this constitution and thereafter in each session
5 preceding each federal population census, a commission of
6 five citizens, none of whom may be public officials, shall
7 be selected to prepare a plan for redistricting and
8 reapportioning the state into legislative ~~and congressional~~
9 districts ~~and a plan for redistricting the state into~~
10 ~~congressional districts~~. The majority and minority leaders
11 of each house shall each designate one commissioner. Within
12 20 days after their designation, the four commissioners
13 shall select the fifth member, who shall serve as chairman
14 of the commission. If the four members fail to select the
15 fifth member within the time prescribed, a majority of the
16 supreme court shall select him.

17 ~~Within 90 days after the official final decennial~~
18 ~~census figures are available, the commission shall file its~~
19 ~~final plan for congressional districts with the secretary of~~
20 ~~state and it shall become law~~

21 ~~3141~~ The commission shall submit its plan for
22 legislative ~~districts~~ to the legislature at the first
23 regular session after its appointment or after the census
24 figures are available. Within 30 days after submission, the
25 legislature shall return the plan to the commission with its

1 recommendations. Within 30 days thereafter, the commission
2 shall file its final plan ~~for legislative districts~~ with the
3 secretary of state and it shall become law.

4 ~~151 The upon filing both plans, the commission is then~~
5 dissolved."

6 Section 2. Section 5-1-101, MCA, is amended to read:
7 "5-1-101. Commission to redistrict and reapportion. In
8 each session preceding each federal population census, a
9 commission of five citizens, none of whom may be public
10 officials, shall be selected to prepare ~~a plan the~~ plans for
11 redistricting and reapportioning the state into legislative
12 and congressional districts."

13 Section 3. Section 5-1-106, MCA, is amended to read:
14 "5-1-106. Legislative council to provide technical and
15 clerical services. The executive director of the legislative
16 council, under the direction of the commission, shall
17 provide the technical staff and clerical services which the
18 commission needs to prepare its districting and
19 apportionment ~~plan~~ plans."

20 Section 4. Section 5-1-108, MCA, is amended to read:
21 "5-1-108. Public hearing on ~~plan~~ plans. ~~111 Before the~~
22 commission files its final congressional redistricting plan
23 with the secretary of state, the commission shall hold at
24 least one public hearing on it."

25 ~~121 Before the commission submits its legislative~~

1 redistricting plan to the legislature, it shall hold at
2 least one public hearing on the plan at the state capitol.

3 I11 The commission may hold other hearings as it deems
4 necessary."

5 Section 5. Section 5-1-109, MCA, is amended to read:

6 "5-1-109. Submission of plan for legislative
7 redistricting to legislature. The commission shall submit
8 its legislative redistricting plan to the legislature by the
9 10th legislative day of the first regular session after its
10 appointment or after the census figures are available."

11 Section 6. Section 5-1-110, MCA, is amended to read:

12 "5-1-110. Recommendations of legislature. Within 30
13 days after the commission submits its legislative
14 redistricting plan to the legislature, the legislature shall
15 return the plan to the commission with its recommendations."

16 Section 7. Section 5-1-111, MCA, is amended to read:

17 "5-1-111. Final plan -- dissolution of
18 commission. I11 Within 20 days after the official final
19 decennial census figures are available, the commission shall
20 file its final plan for congressional districts with the
21 secretary of state and it shall become law.

22 I11 Within 30 days after receiving the legislative
23 redistricting plan and the legislature's recommendations,
24 the commission shall file its final legislative
25 redistricting plan with the secretary of state--~~upon fitting~~

1 ~~the plan and it shall become law, and~~
2 ~~111 Upon filing both plans, the commission shall be~~
3 ~~dissolved."~~

4 ~~NEW SECTION~~ Section 8. Effective date. If approved
5 by the electorate, sections 1 through 7 are effective on
6 October 1, 1985.

7 ~~NEW SECTION~~ Section 9. Submission to electorate.
8 Sections 1 through 7 shall be submitted to the electors of
9 the state of Montana at the general election to be held
10 November 6, 1984, by printing on the ballot the full title
11 of this act and the following:

12 FOR requiring the congressional redistricting plan
13 to be finalized within 90 days after official final
14 census data are available.

15 AGAINST requiring the congressional redistricting
16 plan to be finalized within 90 days after official
17 final census data are available.

-End-

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO COMPENSATE MEMBERS
7 OF THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION AT
8 THE SAME RATE AS MEMBERS OF THE LEGISLATURE; AMENDING
9 SECTION 5-1-104, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12
13 Section 1. Section 5-1-104, MCA, is amended to read:
14
15 "5-1-104. Compensation and expenses. Commissioners are
16 entitled to the same compensation of \$20-per-day-plus-travel
17 expenses as provided for in 2-18-501 through 2-18-503 and
18 expenses as provided to members of the legislature in
19 2-2-302, while attending commission meetings or carrying out
20 the official duties of the commission."

-End-



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